

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
IP-enabled Services)	
)	WC Docket No. 04-36
)	

**COMMENTS OF THE ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES**

The Association for Local Telecommunications Services (“ALTS”) hereby files its comments in the above-referenced proceeding in response to the Commission’s Notice of Proposed Rulemaking in WC Docket No. 04-36.¹ ALTS is the leading national trade association representing the interests of facilities-based competitive local exchange carriers (“CLECs”). ALTS member companies’ primary objective is to provide facilities-based competition in the telecommunications market, including voice, broadband and other advanced telecommunications services.

ALTS shares the Commission’s anticipation in witnessing the explosive growth of IP-enabled services in recent years. These services, like the many CLECs that provide them, offer the opportunity for reduced costs, improved innovation, strengthened network redundancy, and enhanced economic efficiency and growth.² It is important for the Commission to continue promoting the provision of these services by competitive providers because consumers cannot rely upon the ILECs to readily expand this market.

¹ *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28 (rel. Mar. 10, 2004) (“*NPRM*”).

² *Id.* ¶ 5.

In his book, *The Broadband Problem: Anatomy of a Market Failure and a Policy*

Dilemma, Charles H. Ferguson describes the ILECs' resistance to development of VOIP:

Until late 2003, no ILEC ever provided VOIP service of any kind, or any form of integration between VOIP and conventional ILEC voice services. In November 2003, eight years after commercial VOIP products were first introduced, the ILECs announced they would introduce VOIP products of their own in 2004. However, their products appear quite restricted, and the ILECs have not improved the price-performance characteristics of the underlying data services upon which VOIP services depend. It is overwhelmingly likely that the ILECs will in fact continue to resist the growth of VOIP.³

Many ALTS members currently provide IP-enabled services or plan to do so in the near future. Because of this, ALTS members have a keen interest in the outcome of this proceeding. ALTS urges the Commission to be cautious in considering regulation of these services to ensure their continued growth and expansion. However, while ALTS stresses light regulation of the IP-enabled services themselves, the underlying ILEC bottleneck facilities must still be regulated so that UNEs are available to competitive carriers providing telecommunications and broadband services.

The Commission describes the current phenomenon as one where “communications migrate from networks relying on incumbent providers enjoying monopoly ownership of underlying transmission facilities to an environment relying on numerous competing applications traversing numerous competing platforms....” While ALTS certainly hopes to see that migration occur, the marketplace is no where near such a full-fledged migration at this point. In fact, IP-enabled applications require an underlying broadband platform to enable their full functionality. As the Commission noted in its *Pulver Order*, customers of pulver.com services had to “bring their own

³ *The Broadband Problem: Anatomy of a Market Failure and a Policy Dilemma*, Charles H. Ferguson, at 69 (Bookings Institution 2004).

broadband” when accessing pulver.com services.⁴ In many cases, pulver.com services, like many other IP applications now available, still traverse the monopoly-owned transmission facilities of the ILECs. The Commission must understand that although many companies have deployed their own IP networks to transit traffic, there is in no way reduced reliance on or need for competitive access to the underlying ILEC bottleneck facilities, particularly for broadband loops.

The Commission states that some parties suggest that IP-enabled services erode the distinction between facility, protocol, and application “layers,” such that the Commission need not distinguish between these layers.⁵ ALTS strongly disagrees with this assertion and urges the Commission to maintain a distinction between the application or services provided over a transmission facility and the underlying facility itself. Impairment analysis for the underlying ILEC facilities still applies regardless of the applications riding over it. Regardless of the Commission’s classification of particular IP-enabled services themselves as telecommunications services or information services,⁶ the regulatory treatment of those services should be severed from the underlying telecommunications service on which they ride. The Commission seeks to “distinguish those regulations designed to respond to the dominance of centralized, monopoly-owned networks from those designed to protect public safety and other important consumer interests.”⁷ ALTS urges the Commission to make this distinction, so that if it determines that IP-enabled services should be exempt from certain public interest regulations, it will

⁴ In the Matter of Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service, WC Docket No. 03-45, *Memorandum Opinion and Order*, FCC 04-27, ¶ 9 (rel. Feb. 19, 2004) (“*Pulver Order*”).

⁵ NPRM ¶ 37.

⁶ *Id.* ¶ 43.

⁷ *Id.* ¶ 36.

not consequently reduce or eliminate unbundling requirements for the underlying ILEC facilities. The Commission must ensure that CLECs maintain access to those UNEs at cost-based TELRIC rates.

The Commission seeks to examine whether competition in the marketplace may replace the need for regulation.⁸ While regulation of retail IP-enabled services may not be necessary due to the proliferation of services and providers, the Commission must maintain strong enforcement of unbundling requirements if it wants to ensure that competition for those retail services continues. Competition for VOIP and other IP-enabled services is predicated on carriers continuing to have nondiscriminatory access to the underlying facilities to provide competitive broadband services. The Commission asks whether it should account for competition between and among facility, protocol, and application “layers.”⁹ ALTS asserts that if the Commission does not ensure competition exists for the underlying facility “layer,” there will eventually be little or no competition for the protocol “layer” or the application “layer.” “The underlying structure and pricing of broadband data services dominated by the ILECs ... still represents a sharp limit on the usage of VOIP by most users. This suggests strongly that a truly competitive, technologically progressive broadband industry would result in dramatic declines in the cost and price of both local and long-distance telecommunications services.”¹⁰ In the absence of consumer choice for broadband services on which many IP-enabled services ride, ILECs that control bottleneck facilities could exercise a gate keeping role and deny consumers access to nascent technologies.

⁸ *Id.* ¶ 4.

⁹ *Id.* ¶ 37.

¹⁰ *The Broadband Problem: Anatomy of a Market Failure and a Policy Dilemma*, Charles H. Ferguson, at 129 (Bookings Institution 2004).

ALTS supports the Commission's important social goals of ensuring providers cooperate with law enforcement, provide access to emergency services, and secure access by the disabled, but ALTS believes the Commission should give the industry a reasonable opportunity to develop technical solutions that will enable IP providers to fulfill these obligations without heavy-handed regulatory requirements. Business solutions developed by industry participants, if given time, are preferable to regulatory mandates. For example, while ALTS members support and endeavor to comply with law enforcement, the Commission should be careful not to impose unreasonable technological requirements for CALEA compliance that would require small carriers to incur costly adjustments to their networks without compensation from the government.

The question of whether access charges should apply to IP-enabled services cannot be addressed in a vacuum. Access charges are but a piece of the larger intercarrier compensation puzzle that ensures a robust and vibrant Universal Service Fund ("USF"), while ensuring that carriers are compensated for costs imposed on them in the course of transporting traffic for other carriers. ALTS supports an intercarrier compensation regime that adequately compensates carriers for their costs of originating and terminating traffic and that does not distinguish between reciprocal compensation and access charges. ALTS agrees that "the cost of the PSTN should be borne equitably among those that use it in similar ways"¹¹ and that proper intercarrier compensation rates should apply to traffic that uses the public switched telephone network ("PSTN").

¹¹ NPRM ¶ 33.

CONCLUSION

Many ALTS members currently provide cutting edge IP-enabled services or plan to do so in the near future, and ALTS urges the Commission not to heavily regulate these services in order to ensure their continued growth and expansion. However, while ALTS stresses light regulation of the IP-enabled services themselves, the underlying ILEC bottleneck facilities must still be regulated so that UNEs are available to competitive carriers providing telecommunications and broadband services.

Respectfully Submitted,

/s/

Teresa K. Gaugler, Assistant General Counsel
Association for Local
Telecommunications Services
888 17th Street, NW, Suite 1200
Washington, DC 20006
(202) 969-2587
tgaugler@alts.org

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